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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,623	03/30/2004	Harold W. Trammel II	79436	3469

7590 10/17/2007
David W. Highet
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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/812,623	Applicant(s) TRAMMEL ET AL.	
	Examiner William H. Beisner	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/12/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species (i) in the reply filed on 8/1/2007 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 14-17 and 19-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/1/2007.

Information Disclosure Statement

3. The information disclosure statement filed 7/12/2004 has been considered and made of record.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, 4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Locke et al.(US 5,782,035).

With respect to claim 1, the reference of Locke et al. discloses a dish assembly (See Figures 11 and 14) comprising a dish (Fig.11:122 or 124) having a polygonal bottom wall with an outer periphery and a side wall enclosure extending up from the bottom wall, the side wall enclosure including a plurality of substantially planar panels and non-planar corners connecting adjacent panels, the side wall enclosure including a top edge spaced from the bottom wall, the side wall enclosure including a plurality of engagement structures (Fig.3:70) formed on inwardly facing surface regions of the substantially planar panels at locations spaced from the non-planar corners (See Figures 11 and 14). The assembly also includes a splash guard (Fig.14:186) having a frame-shaped top wall seated on the top edge of the side wall enclosure (See Figure 14) and engagement flanges (Fig.8:150; Fig.12:168; column 10, lines 9-31) extending down from the top wall and nesting with portions of the planar panels, the engagement flanges (Fig.12:168) including engagement structures (Fig.8:150) releasably engaged with the engagement structures (Fig. 3:70) on the planar panels.

With respect to claim 2, the engagement structures (Fig.3:70) are formed on each of the planar panels of the side wall enclosure (See Figures 11 and 14).

With respect to claim 3, the engagement structures (Fig.3:70) are elongated and define a direction of elongation substantially parallel to the bottom wall of the dish.

With respect to claim 4, the engagement structure (Fig.3:70) is rectangular.

With respect to claim 8, the top wall of the splash guard (Fig.14:186) is substantially parallel to the bottom wall of the dish.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyman et al.(US 6,790,655) in view of Banes (US 5,593,891).

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The reference of Lyman et al. discloses a culture dish assembly (Fig. 1A) that includes a culture dish (Fig.4:1) having a polygonal bottom wall (Fig.4:B) with an outer periphery and a side wall enclosure (Fig.4:A) extending up from the bottom wall, the side wall enclosure including a plurality of substantially planar panels and non-planar corners connecting adjacent panels, the side wall enclosure including a top edge spaced from the bottom wall, The assembly also includes a splash guard (Fig.4:4) having a frame-shaped top wall seated on the top edge of the side wall enclosure (See Figure 4).

With respect to claim 1, the reference of Lyman et al. fails to disclose that the side wall enclosure including a plurality of engagement structures formed on inwardly facing surface regions of the substantially planar panels at locations spaced from the non-planar corners and that the guard includes engagement flanges extending down from the top wall and nesting with portions of the planar panels, the engagement flanges including engagement structures releasably engaged with the engagement structures on the planar panels.

The reference of Banes discloses that it is known in the art of splash guards for culture dishes to provide a number of alternative means for securing the splash guard to the culture dish. Specifically, the reference of Banes discloses providing the splash guard (Fig.17:70) with flange (Fig.17:72) that includes engagement features (Fig.17:74) that releasably engage with engagement features (Fig.17:76).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the splash guard of the primary reference of Lyman et al. with an engagement flange (Fig.17:72) and engagement features (Fig.17:74) and the side walls of Lyman et al. with engagement features (Fig.17:76) for the known and expected result of providing an alternative

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means recognized in the art to achieve the same result, removably or releasably secure a splash guard to the top of a culture dish.

With respect to claim 2, the engagement structures (76) would be formed on each of the planar panels of the side wall enclosure.

With respect to claim 3, the engagement structures (76) would be elongated and define a direction of elongation substantially parallel to the bottom wall of the dish.

With respect to claim 4, the engagement structures (76) would be rectangular.

With respect to claim 5, the engagement structures (76) would project inwardly.

With respect to claim 6, the engagement structure (74) would be recesses.

With respect to claim 7, the bottom wall of the dish defines a square with rounded corners (See Figures 1A and 4).

With respect to claim 8, the top wall of the splash guard (Fig.4) is substantially parallel to the bottom wall of the dish.

With respect to claim 9, the top wall of the splash guard includes an outer periphery that is registered with the outer periphery of the top edge of the side wall (See Figure 4).

With respect to claim 10, the splash guard would include an inner peripheral lip (72) extending down from the top wall to the bottom wall.

With respect to claim 11, the reference of Banes discloses the use of openings (28) for pouring liquids. As a result, it would have been obvious to one of ordinary skill in the art to provide the splash guard of the modified primary reference with openings for pouring liquids from the dish as suggested by the reference of Banes.

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With respect to claim 12, the side wall (A) of the dish tapers outwardly (See Fig. 4 of Lyman et al. and Fig. 17 of Banes).

With respect to claim 13, if the engagement flange (72) does not taper inwardly to match the outward taper of the side wall of the dish, it would have been obvious to make the flange taper inwardly for the known and expected result to match the angle of the side wall of the culture dish.

With respect to claim 18, both the references of Lyman et al. (See Fig. 1A) and the reference of Banes (See Figure 3) disclose the use of a cover with the dish/splash guard assembly.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/
Primary Examiner
Art Unit 1797

WHB